



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of PACIFIC GAS AND
ELECTRIC COMPANY for Review of
Entries to the Energy Resources
Recovery Account (ERRA) And
Compliance Review of Electric
Contract Administration, Economic
Dispatch of Electric Resources, and
Utility Retained Generation Fuel
Procurement Activities.

(U 39 E)

A.05-02-014

OPENING BRIEF OF THE OFFICE OF RATEPAYER ADVOCATES

Pursuant to Rule 75 of the Commission's Rules of Practice and Procedure, the Office of Ratepayer Advocates ("ORA") hereby submits its Opening Brief in the above-captioned proceeding. In this proceeding, Pacific Gas and Electric Company ("PG&E") has asked the Commission to approve its contract administration, least cost dispatch, and other procurement activities during the record period January 1, 2004 through December 31, 2004 for the Energy Resource Recovery Account ("ERRA"). In this brief, ORA will address the following issues:

(1) Whether the Administrative Law Judge's ruling denying PG&E's Motion to Strike should be upheld by the full Commission?

(2) Whether the Commission should impose a disallowance on PG&E based on the estimated replacement power costs for its approximately two month unplanned outage at the Rock Creek Powerhouse Unit 1?

I. THE COMMISSION SHOULD UPHOLD THE ALJ RULING DENYING PG&E'S MOTION TO STRIKE

During the August hearings in this proceeding, the assigned ALJ denied PG&E's July 26, 2005 Motion to Strike the portion of ORA's testimony addressing the reasonableness of the operation of PG&E's utility owned generation or URG. PG&E had sought to strike this testimony on the basis that the reasonableness of its URG operations fell outside the scope of this proceeding. Motion to Strike at p. 1. As ORA explained in its August 10, 2005 Opposition to PG&E's Motion to Strike, PG&E's motion was without merit. No party has disputed that PG&E's fuel costs for its own generation facilities are subject to review in this ERRA proceeding. And, in order to review fuel costs, ORA must sometimes review the underlying URG operations. Accordingly, ORA respectfully requests the Commission to deny any PG&E request to overturn the ALJ's ruling denying PG&E's Motion to Strike.

A. The Scope of this ERRA proceeding as defined by the Commissioner's Scoping Memo necessarily includes whether PG&E operated its URG facilities in a reasonable manner

On April 18, 2005, assigned Commissioner Grueneich issued the "Assigned Commissioner's Scoping Memo and Ruling" in this proceeding. This Ruling set forth the scope of this proceeding. Grueneich Ruling at p. 1. The Ruling provided that "The scope of this proceeding is to determine whether Pacific Gas and Electric Company's (PG&E) power procurement activities for the recorded period January 1 through December 31, 2004 complied with its adopted procurement plan; and whether its Energy Resource Recovery Account (ERRA) entries for that period are **reasonable**." Grueneich Ruling at p. 1. Emphasis added.

During ORA's analysis of PG&E's procurement costs and as part of ORA's review of the ERRA entries regarding URG fuel costs, ORA decided it needed to evaluate whether PG&E's URG outages could have been avoided or minimized and, if so, whether the fuel costs relied upon in lieu of such nonfunctioning URG were a reasonable substitute. This question was an important part of ORA's analysis because, in

ORA's opinion, if such outages were preventable, PG&E may have been able to procure cheaper fuel from the URG facilities that suffered the preventable outages.

In other words, determining whether or not the outages were preventable (or reasonable) was, for ORA, a necessary prerequisite to evaluating an issue that is indisputably within the scope of this proceeding, the costs of PG&E's fuel procurement. Even PG&E has agreed that URG fuel costs fall within the scope of this proceeding. Motion to Strike at p. 4. Accordingly, the information at issue was clearly relevant to the issues in this proceeding, and the Commission should not overrule the ALJ's denial of this Motion to Strike.

B. The minimum operating requirements imposed on PG&E by General Order No. 167 (the Operation and Maintenance Standards for Electric Generation Facilities) do not duplicate or prevent the Commission's review of costs performed in this proceeding

PG&E has claimed that ORA is seeking to significantly expand the scope of this proceeding to include a reasonableness review of how PG&E operated and maintained all of its URG generation facilities during the record period. Motion to Strike at pp. 1-2. PG&E has further claimed that such an expansion would duplicate a review that already occurs under General Order No. 167. Motion to Strike at p. 2. PG&E's arguments misstate the purpose of General Order No. 167.

ORA's review in this proceeding is not duplicative of General Order No. 167. In this proceeding, ORA is looking at procurement costs. Under General Order No. 167, the Commission reviews safety and operation standard. The Commission adopted General Order No. 167 in Rulemaking No. 02-11-039 to impose minimum operation standards on independent generators and on most URG. *See, generally*, General Order No. 167 (Purpose Statement) at p. 1. As correctly explained by PG&E, General Order No. 167 imposes a "separate set of procedures and processes to ensure that electric generation facilities are properly maintained and operated." Motion to Strike at p. 2. In part, ORA even agrees with PG&E that the General Order No. 167 "standards are now the Commission's tool "to implement and enforce standards for maintenance and operation

of electric generating facilities and power plant....” Motion to Strike at p. 6. ORA does not agree, however, that General Order No. 167 is the only “tool” at the Commission’s disposal to ensure appropriate URG costs. The primary “tool” for review of fuel costs, including URG costs, is this ERRA proceeding.

In addition, ORA’s main focus in this proceeding is on PG&E’s fuel costs and purchased power costs. ORA only looked at “operations,” which are addressed in General Order No. 167, in the process of evaluating fuel costs. Therefore, while ORA’s testimony does address the operations of PG&E’s URG, ORA found that, in order to properly evaluate fuel costs, it first had to address the issue of whether URG outages were appropriate and the types of fuels that PG&E turned to during such outages. Again, ORA’s focus was on fuel costs, not operations. And, as explained above, the review of costs associated with URG is clearly within the scope of this proceeding. Grueneich Ruling at p. 1.

Furthermore, General Order No. 167 does not alter or reduce the Commission’s existing authority over power plants, including URG. The Commission has long held the authority to evaluate URG costs under a variety of statutes, including Section 454. This preexisting authority was not modified by General Order 167, as suggested by PG&E. General Order 167 specifically provides that, “Nothing in this general order diminishes, alters, or reduces the Commission's existing authority to inspect power plants and to request data from those power plants to assure continued maintenance and operation of the facilities in order to support public safety and the reliability of California's electricity supply.” *See, generally*, General Order No. 167 (Purpose Statement) at p. 1.

Accordingly, even if PG&E was correct, that General Order No. 167 is the “tool” for evaluating URG operations or that the review presented by ORA somehow duplicates the requirements of General Order No. 167, the General Order does not preclude the Commission’s consideration of ORA’s testimony. The denial of PG&E’s Motion should, therefore, be upheld.

**C. PG&E's Understanding of the Scope of ERRA Reviews
unduly restricts the Commission's review of URG costs**

PG&E has claimed that ORA's review of URG goes "well beyond the review of PG&E's contract administration and least-cost dispatch of resources in its portfolio contemplated by Public Utilities Code Section 454.5(d) and the Commission's implementing decisions." Motion to Strike at pp. 1-2. This conclusion, however, relies upon the wrong standard to determine the scope of review for URG. PG&E's characterization of the "scope for review" of URG costs is based on the scope of review adopted by the Commission for least cost dispatch. Motion to Strike at p. 5. The Commission did not adopt a similar standard for review of URG fuel costs booked into the ERRA.

PG&E correctly points out that the Commission developed the ERRA reviews based on certain legislative directives set forth in Section 454.5 and that, this Section, only infrequently mentions URG. Motion to Strike at p. 3. But from this, PG&E incorrectly infers that "The regulatory process that the Commission was permitted to establish as an ERRA compliance review was specifically limited to electric procurement contracts," and does not include URG purchases and sales. To the extent that PG&E has claimed that Section 454.5 precludes the Commission's review of URG costs in the ERRA, no support for such a proposition exists in the plain language of the legislation.

Furthermore, PG&E's argument that Decision No. 05-01-024 precludes review of URG costs is, likewise, misplaced. In Decision No. 05-01-024 the Commission did not specifically address the issue of URG review. Instead, the Commission ruled on the scope of review for least-cost dispatch and the standard of review for least-cost dispatch. Decision No. 05-01-024, *mimeo*, at p. 4 and p. 10.

However, the Commission in Decision No. 05-01-024 did make several relevant statements regarding the amount or type of acceptable evidence submitted in the ERRA proceeding. The Commission noted that "Imposing a compliance review process for least-cost dispatch under SOC4 rather than a reasonableness review process does not diminish the Commission's ability to ensure just and reasonable rates." Decision No. 05-

01-024, Conclusion of Law No. 7, at p. 37. In explaining this conclusion, the Commission further noted that “this determination does not necessary diminish the need for, or breadth of, the utility’s showing to demonstrate least-cost dispatch compliance, when compared to that required in a reasonableness review.” Decision No. 05-01-024, *mimeo*, at p. 14. And, finally, the Commission stated in this ERRA proceeding that the utility “must demonstrate that it has complied with this standard, by providing sufficient information and/or analysis in order for the Commission to verify that SCE’s dispatch resulted in the most cost-effective mix of total resources....” Decision No. 05-01-024, *mimeo*, at p. 14. In short, the Commission did not seek to limit the access to information necessary to prove IOUs operated to produce the “lowest possible costs” for ratepayers. Decision No. 05-01-024, *mimeo*, at p. 14.

For these reasons, PG&E’s argument that the information presented by ORA falls outside of the scope of this proceeding as defined by Decision No.05-01-024 should be rejected. And, the Commission should uphold the ALJ’s denial of PG&E’s Motion to Strike.

II. THE COMMISSION SHOULD IMPOSE A DISALLOWANCE ON PG&E’S RELATED TO ITS FAILURE TO ADEQUATELY MANAGE ITS URG PROCUREMENT

ORA’s Report recommends that the Commission impose a disallowance on PG&E based a two month unplanned outage at its Rock Creek Powerhouse Unit #1. Exhibit 3, ORA Prepared Testimony, at p. 2-3. As a result of this two month unplanned outage, ORA calculated that PG&E had to made power purchases from other sources to replace this non-operative hydro unit at a cost to ratepayers of \$2,170,000. Accordingly, ORA suggests the Commission impose a disallowance on PG&E for this amount.

A. The Rock Creek Powerhouse Unit 1 experienced excessive unplanned outages

PG&E’s Rock Creek Powerhouse Unit 1 experienced an unplanned outage from October 6, 2004 through December 7, 2004. Exhibit 3, ORA Prepared Testimony, p. 2-5. This outage was an unplanned outage caused by equipment failure. Ex. 3, ORA Prepared

Testimony, p. 2-5. PG&E was unable to fix the equipment failure, described as a failure of the upper guide and thrust bearings, for two months. Ex. 2, PG&E Rebuttal, p. 5-5. According to PG&E, it took approximately two months to fix the hydro unit because the repair involved machinery difficult to access. Ex. 2, PG&E Rebuttal, p. 5-5. ORA characterized this repair process differently. ORA's Report suggests that a lack of spare parts cause a delay in the repairs. Ex. 3, ORA Testimony, p. 2-5. Based on the historical outage information reviewed by ORA, this outage was excessive because it was unplanned and because it continued for two months. Accordingly, ORA looked at whether PG&E might have incurred replacement power costs due to this outage.

B. PG&E incurred replacement power costs of approximately \$2 million due to this unplanned two month outage at Rock Creek Powerhouse Unit 1

Based on the average power prices that existed during the outage, ORA arrived at an estimate of a cost to ratepayers of \$2,170,000 due to the unplanned two month outage at Rock Creek Powerhouse Unit 1. Ex. 3, ORA Prepared Testimony, p. 2-5. Based on available information, ORA concluded that, during this outage, PG&E would have had to purchase lost generation at market prices. Ex. 3, ORA Prepared Testimony, p. 2-5. ORA calculated a cost to ratepayers of \$2,170,000. Ex. 3, ORA Prepared Testimony, p. 2-5. Accordingly, the Commission should impose a disallowance on PG&E for \$2,170,000 for this generation cost.

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III. CONCLUSION

WHEREFORE, ORA respectfully requests the Commission (1) to deny any request by PG&E to overrule the ALJ's ruling on the PG&E Motion to Strike and (2) to impose a disallowance on PG&E for \$2,170,000 for estimated replacement power costs due to a two month unplanned outage of its Rock Creek Powerhouse Unit 1.

Respectfully submitted,

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September 9, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document
“**OPENING BRIEF OF THE OFFICE OF RATEPAYER ADVOCATES**” in **A.05-02-014**.

A copy was served as follows:

☒ **BY E-MAIL:** I sent a true copy via e-mail to all known parties of record who have provided e-mail addresses.

☐ **BY MAIL:** I sent a true copy via first-class mail to all known parties of record.

A hard-copy has been provided to Administrative Law Judge Galvin.

Executed in San Francisco, California, on the 9th day of September, 2005.

/s/ ANGELITA MARINDA
Angelita Marinda